



[10121/01301 -99-0090]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : German TRABADA et al.  
Serial No. : 10/753,848  
Filed : January 8, 2004  
For : ENDOLUMINAL ACCESS DEVICES AND  
RELATED METHODS OF USE  
Group Art Unit : 3731  
Examiner : TBA

Mail Stop: Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.47(a) TO FILE APPLICATION  
WITHOUT EXECUTED DECLARATION OF JOINT INVENTORS**

Applicants, Mr. Russell F. Durgin, Jr., Mr. Robert Sakal and the Assignee of the entire interest of Mr. Durgin and Mr. Sakal, through their attorneys, hereby petition under 37 C.F.R. § 1.47(a) to file the above-identified application without the executed declaration of joint inventor, Mr. German Trabada, on account of Mr. Trabada's refusal after diligent efforts afforded by the Assignee, to execute the Declaration and Assignment in the above-identified application.

REMARKS

The above-identified application ("the Application") was filed on January 8, 2004 and received Application Serial No. 10/753,848. A Notice to File Missing Parts indicating the Application was filed without an executed Declaration was mailed by the USPTO on April 21, 2004.

Since April 21, 2004, joint inventors Mr. Durgin and Mr. Sakal have each executed a Declaration and an Assignment for the Application, copies of which are enclosed herewith. However, to date, joint inventor Mr. Trabada has not executed a Declaration.

The joint inventors were employed by Boston Scientific Corporation ("BSC") at the time of invention of the subject matter of the Application. The Assignee of the Application, Scimed Life Systems, Inc. ("Scimed"), is a wholly-owned subsidiary of BSC. Hereinafter, BSC and Scimed will be referred to as a single entity, "BSC/Scimed."

According to an employment agreement executed by Mr. Trabada, Mr. Trabada agreed to abide by the policies contained therein as well as the policies included in an Employee Handbook regarding execution of patent documents and the assignment of patent rights while employed by BSC/Scimed. Specifically, the Patent Policy of BSC/Scimed states:

All inventions and discoveries made by you, solely or jointly with others, during the period of your employment with Boston Scientific/Symbiosis and six months

thereafter; arising out of employment or pertaining to the business or the research activities of Boston Scientific/Symbiosis, and all records including original notebooks, drawings and memoranda (which hereby you agree to keep), are and shall be the property of Boston Scientific/Symbiosis.

...

Upon request of Boston Scientific/Symbiosis and at its expense, you or your legal representative will apply for Letters of Patent in this and in foreign countries on such inventions and discoveries; will execute all papers necessary thereto, including assignments of patent applications and patents; and will lend assistance to the prosecution of defense of any proceedings in or relating to such patent applications and patents. When such assistance is rendered after employment, Boston Scientific/Symbiosis will pay a reasonable sum (as determined by Boston Scientific/Symbiosis) for time and expenses.

Mr. Trabada's signed employment agreement, receipt of the employee handbook and acknowledgment of at-will employment are attached hereto as Exhibit I. The relevant portion of the employee handbook is further attached hereto as Exhibit II.

Mr. Trabada was contacted on numerous occasions at his last known home and business addresses by mail and telephone. These contacts were directed to obtaining an executed declaration and formal assignment for the Application. Mr. Trabada's last known home address is 16892 S.W. 1<sup>st</sup> Street, Pembroke Pines, Florida 33027-1093, and Mr. Trabada's last known business address is 8600 N.W. 41 Street, Miami, Florida 33166-6202.

A Declaration of Kathleen Dillon, a patent secretary

employed by BSC/Scimed, who has first hand knowledge of the diligent efforts and the failure to obtain the Declaration and the formal assignment of joint inventor, Mr. Trabada, is submitted herewith, along with the documentary proofs mentioned in the respective Declaration.

Abandonment of the application for failure to provide an executed declaration from Mr. Trabada would result in irreparable damage to Mr. Durgin and Mr. Sakal who have each executed a declaration and an assignment, and to the assignee of the Application. The Assignment with the signatures of Mr. Durgin and Mr. Sakal, and without the signature of Mr. Trabada is attached hereto as Exhibit III.

An unsigned declaration is enclosed herewith.

A check in the amount of \$130.00 is enclosed herewith to cover the requisite petition fee under 37 C.F.R. § 1.17(i).

CONCLUSION

Favorable consideration of the present petition is respectfully requested.

Date: *Nov. 22, 2009*

By:   
Greg F. Kaplun (Reg. No. 45,559)

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New York, NY 10038  
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**EXHIBITS I-III FOR  
PETITION UNDER 37 C.F.R. § 1.47(a) TO FILE APPLICATION  
WITHOUT EXECUTED DECLARATION OF JOINT  
INVENTORS**

# Boston Scientific Corporation

8600 N.W. 41 Street  
Miami, FL 33166-6202  
Telephone (305) 597-4000  
Fax (305) 597-4001

October 9, 1997

German Trabada  
16892 SW 1<sup>st</sup> Street  
Pembroke Pines, FL 33027

Dear German:

On behalf of Boston Scientific Corporation, I am very pleased to confirm our offer of employment and outline below the terms and conditions.

Your new position will be Designer I. You will report directly to Matt Solar, R&D Engineering Manager.

**Compensation:**

BSC's compensation programs provide our employees, on a pay for performance basis, with significant compensation opportunities. The objective of these programs is to recognize and reward both individual and company performance.

**Base Salary** - Your base salary will be \$1615.40 per period, payable bi-weekly, which annualized equals \$42,000.40. Your next review of performance and annual base salary will occur in January 1999.

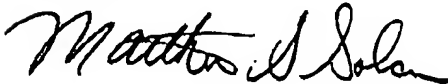
**BSC Performance Bonus Award Program** - You will be eligible to participate in the annual BSC Performance Bonus Award Program, subject to terms generally applicable to program participants. For 1998, your annual target bonus opportunity range is 0%-7%. Your actual award will be based on your level of achievement of individual goals and BSC's achievement of corporate performance goals. You must be employed on the date the award is paid to remain eligible in any given year.

**Acceptance:**

Please indicate your formal acceptance of this position by signing and returning the entire original of this letter no later than October 10, 1997.

German, I believe the opportunity with Boston Scientific Corporation's Symbiosis organization will be a mutually rewarding one, and I look forward to your contributions.

Sincerely,



Matt Solar  
R&D Engineering Manager  
Boston Scientific Corporation  
Symbiosis Facility

Accepted: \_\_\_\_\_

(name)

Date: \_\_\_\_\_

10/10/97

**RECEIPT OF THE SYMBIOSIS CORPORATION  
EMPLOYEE HANDBOOK**

I, German Trabada, have received a copy of the Symbiosis Corporation Employee Handbook. I agree to read the complete handbook and to abide by the rules, policies and benefits contained therein.

I understand that the rules, policies, and benefits contained in the Employee Handbook may be modified, substituted or deleted at any time.

I understand that neither this handbook nor any other communication by management is intended to, in any way, create a contract of permanent employment.



\_\_\_\_\_  
Employee Signature

9/29/94  
\_\_\_\_\_  
Date received



**Acknowledgment of Employment at Will Agreement  
and  
Receipt of Handbook**

In consideration of my employment, I agree to conform to the rules and regulations of the Company. I understand that my employment may be terminated at-will with or without notice, at anytime, at the option of either the Company or myself.


I understand that no management representative has any authority to enter into any agreement of employment for any specific period of time, except for the Vice President and General Manager. Any such agreement between the Vice President and General Manager and myself must be in writing.

I German Trabada, have received a copy of the Boston Scientific/Symbiosis Employee Handbook. I agree to read the complete handbook and to abide by the rules, policies and benefits contained therein.

I understand the rules, policies, and benefits contained in the Employee Handbook may be modified, substituted or deleted at anytime.

I understand that neither this Handbook nor an other communication by management is intended, in any way, to create a contract of permanent employment.

German Trabada  
Employee Name

  
Employee Signature

1/20/99  
Date Received

## **EXHIBIT II**

## **B. Employment Policies**

### **Equal Employment Opportunity Policy**

It has been and will continue to be a fundamental policy of Boston Scientific to provide equal opportunity for all qualified applicants and employees without regard to race, color, Vietnam Era or disabled veteran status, religion, age, sex, national origin, physical or mental disabilities, sexual orientation or any other legally protected status with respect to recruitment, compensation, benefits, hiring, training, promotion, transfers, layoffs, recalls, recreation programs, and all other terms and conditions of employment.

At Boston Scientific, we provide a work environment where individual dignity is respected and each employee is encouraged to reach his/her highest level of productivity and achievement. We expect employees to respect their co-workers and actively support our workplace values.

To further the principle of equal employment opportunity for all, Boston Scientific maintains and updates each year Affirmative Action Plans for minorities and women, the disabled, Vietnam era veterans, and disabled veterans. Relevant portions of these Plans are available for your inspection upon request. Please ask a member of the Human Resources Department for information regarding these plans.

Effective implementation and ongoing administration of our Equal Employment Opportunity policy is the direct responsibility of the Human Resources Department. All complaints of discriminatory treatment in violation of this policy should be brought to the attention of the Director of Human Resources so that an internal investigation and any appropriate remedial action may be undertaken.

It is the responsibility of each and every employee of Boston Scientific to give our policy of equal employment opportunity real meaning and full support.

### **Harassment Awareness Policy**

In order to provide a productive and pleasant working environment, it is important that we at Boston Scientific maintain an atmosphere characterized by mutual respect. Boston Scientific does not condone and will not tolerate any form of harassment. It is our policy to take disciplinary action, up to and including termination, against the offending party. This includes harassment on the basis of race, color, religion, physical or mental disability, sex, national origin, sexual orientation, age or status in any legally protected group.

With respect to sexual harassment, Boston Scientific prohibits the following:

1. Unwelcome sexual advances, requests for sexual favors, and all other unwelcome verbal or physical conduct of a sexual nature, when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
  - Submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment; or
  - Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

2. Determinations of whether particular conduct of a verbal or physical nature is subject to disciplinary action under this policy are made on an individual basis, in light of all the facts and circumstances. However, the following are some examples of conduct which all employees of Boston Scientific are cautioned to avoid. This is not an exhaustive list:
  - Comments to, or about, any employee on his/her appearance that is sexually graphic or would otherwise tend to be degrading;
  - Any physical contact of a sexual nature;
  - Jokes or other remarks with sexual content that is graphic or may otherwise be offensive to others;
  - Display of objects, posters or pictures of a sexual nature; or
  - A repetition of any words or conduct of a sexual nature after the person addressed has indicated that such words or conduct is unwelcome.

### Complaint Procedure

All complaints of harassment, sexual and otherwise, should be handled as follows:

1. Any employee who feels he or she has been subjected to sexual or other form of harassment has a responsibility to report the incident to their immediate supervisor. Based on the circumstances of the complaint, the employee instead may choose to discuss the incident with the next level of management, or any member of the Human Resources management staff.
2. Supervisors and managers who suspect or are informed of an incident of sexual or other form of harassment must advise the Human Resources Department immediately.
3. Human Resources will investigate the complaint promptly in an impartial and confidential manner. Only those individuals with a "need to know" will be involved in or informed of any complaint or investigation. However, it must be understood that the company is obligated to promptly and thoroughly investigate all claims of harassment.
4. After the investigation is completed, a determination will be made regarding the resolution of the complaint. In all cases, the employee will be kept informed of the findings and recommendations.
5. If an employee is not satisfied with the handling of a complaint or the action taken by the supervisor, then he/she should bring the complaint to the attention of the Director of Human Resources.
6. Any employee, supervisor, or manager who is found, after appropriate investigation, to have engaged in harassment of another employee will be subject to appropriate disciplinary action, depending on the circumstances, up to and including termination.
  - Any form of retaliation against an individual who reports or serves as a witness to sexual or any other form of harassment will not be tolerated. Violation will subject the offender to disciplinary action up to and including termination.

## Conflict of Interest Policy

During your employment, Boston Scientific/Symbiosis Corporation expects you to work in the best interest of the Company and to refrain from any outside activities that might conflict with the best interests of the Company.

The Company does not wish to limit your legitimate outside activities which do not impair your effectiveness at work. However, because of the diversification of the Company activities and the highly proprietary nature of developmental projects, it is unlikely that you can be fully informed as to the extent and scope of Company activities.

To reduce the possibility of conflicts of interest and subsequent embarrassment to you and to the Company, you shall be expected to consult with Company management prior to engaging in any outside business or professional activity. Accordingly, you and the Company agree as follows:

1. That, during your employment with the Company, you shall inform your immediate superior of any business or professional activity you or any member of your immediate family plans to undertake including, but not limited to, association with any outside concern which presently does business with the Company and from which you or any member of your immediate family has or will have a substantial financial interest.
2. If a conflict of interest appears possible, you shall submit a written proposal of the intended activity.
3. The Company shall review the submitted proposal and provide you, within one week of the receipt of the proposal, a written response as to whether or not the proposed activity is considered to be a present or potential conflict of interest. If the evaluation of the proposal requires detailed information not reasonably available within one week, the response shall be delayed and the Company shall inform you as to the reason for delay.
4. If it is determined that a conflict of interest exists, present or potential, you or the member of your immediate family shall refrain from association with the proposed activity.
5. If it is determined by the Company that a limited conflict of interest exists, present or potential, the Company shall inform you of constraints that shall be applied to the activity.
6. You shall have the right to appeal the decision of the Company by submitting a more detailed proposal.
7. The Company shall respond to any appeal by the process shown in Paragraphs 3 and 4 above.

## **Business Conduct Policy**

Boston Scientific/Symbiosis Corporation follows a policy of treating all suppliers equally. In addition, the Company must ensure that any contacts with competitors or government officials are within the boundaries of sound ethical practices.

The spending or receiving of gifts or favors, though made in the most friendly spirit, may cause embarrassment to one or both parties. Furthermore, acceptance of gifts or favors may imply an obligation on one party to provide special treatment to the other.

In consideration of the salary received during employment with Boston Scientific/Symbiosis, you hereby agree as follows:

1. You shall refrain from any action which might be construed as improperly influencing the relationship between the Company and a supplier, competitor or government official.
2. You shall neither make nor receive any payments, gifts of other than token value, favors other than minor gestures, loans of money or other objects of substantial value, or excessive entertainment to or from any supplier, competitor, or government official.
3. When interpreting "token value", "minor gestures", "substantial value" and "excessive entertainment" as described in Paragraph 2 above, you shall use conservative judgment. If you have any doubt concerning such interpretations, you shall consult with your immediate superior for guidance.
4. If you have any reason to believe an action might be viewed as other than proper and ethical business conduct, you shall not consent to such action.

## Patent Policy

All inventions and discoveries made by you, solely or jointly with others, during the period of your employment with Boston Scientific/Symbiosis and six months thereafter; arising out of employment or pertaining to the business or the research activities of Boston Scientific/Symbiosis, and all records including original notebooks, drawings and memoranda (which hereby you agree to keep), are and shall be the property of Boston Scientific/Symbiosis.

You will promptly, without request, disclose to Boston Scientific/Symbiosis all such inventions and discoveries you make.

Upon request of Boston Scientific/Symbiosis and at its expense, you or your legal representative will apply for Letters of Patent in this and in foreign countries on such inventions and discoveries; will execute all papers necessary thereto, including assignments of patent applications and patents; and will lend assistance to the prosecution of defense of any proceedings in or relating to such patent applications and patents. When such assistance is rendered after employment, Boston Scientific/Symbiosis will pay a reasonable sum (as determined by Boston Scientific/Symbiosis) for time and expenses.

Upon the termination of employment, you or your legal representative shall promptly deliver to Boston Scientific/Symbiosis all originals and copies of drawings, records, reports, notes, correspondence, photographs, blueprints, maps and any other recorded, written or printed matter under your control relating to any inventions and discoveries referred to herein and will return all property of Boston Scientific/Symbiosis such as equipment, specimens, samples, models and biological culture.

## • Unfair Competition Policy

The medical device fields in which Boston Scientific is active, are highly competitive. Success in these fields requires the cooperation and interaction of employees with skills, knowledge and expertise in various technical areas. Such cooperation frequently involves development plans, engineering specifications, manufacturing techniques and equipment, schematics, product performance data, etc. Boston Scientific recognizes your professional satisfaction and Boston Scientific goals will benefit if you have access to the information you need to perform your duties in a professional manner. You are, therefore, encouraged to participate in the free exchange of information and cooperation with other technical employees.

The information you will receive and develop is obviously important to Boston Scientific. Boston Scientific expects you to keep secret its proprietary and confidential information and not to compete with Boston Scientific during your employment and for a reasonable period after employment.

Accordingly, you and Boston Scientific agree as follows:

1. That, during your employment with Boston Scientific and for six months after employment, you will not directly or indirectly own, operate, manage, consult with, control, participate in the management or control of, be employed by, maintain or continue any interest whatsoever in any enterprise that designs, manufactures, distributes, markets or promotes medical devices or their components in competition with Boston Scientific (a "Conflicting Organization"), in any technical area of expertise in which you were involved during the year prior to termination of your employment, without the written consent of an officer of Boston Scientific.
2. That, during your full-time employment with Boston Scientific and after said employment, you will not disclose, nor will you authorize or permit anyone under your direction to disclose to anyone not normally furnished such information in the normal course of Boston Scientific business, any confidential information relative to the business, products, inventions, components, designs, product development plans or product performance of Boston Scientific, whether developed by you or others, without the written consent of an officer of Boston Scientific.
3. That, upon termination of full-time employment with Boston Scientific you will not take or keep any papers, design plans, engineering drawings, specifications, manufacturing plans, schematic diagrams, publications, files, product development plans, equipment, samples, credit cards or any other original documents or copies of any kind belonging to or furnished by Boston Scientific without the written consent of an officer of Boston Scientific.
4. That, during your full-time employment with Boston Scientific and for one year after such employment, you will not either directly or in concert with others, seek to influence any employee to leave Boston Scientific's employment.
5. That, you acknowledge that a lawsuit for damages for any of the provisions of this agreement will be inadequate and agree that Boston Scientific is entitled to injunctive relief in case of any such breach. If any part of this agreement is held to be invalid or unenforceable, such holding will not affect any other part of the agreement. If, moreover, any part of this agreement is for any reason held to be excessively broad as to time, duration, geographical scope, activity or subject, it will be construed, by limiting or reducing it, so as to be enforceable to the extent compatible with the applicable law as it then exists.



## Stock Trading Policy

### Introduction

The purpose of this Policy is to reduce the risk that directors, officers or employees of Boston Scientific Corporation ("Boston Scientific") might be found to have engaged in insider trading in violation of securities laws of the United States or in activities which are otherwise inconsistent with Boston Scientific's standards of business ethics. Insider trading may result in unfair manipulation of the market in Boston Scientific's stock and may adversely affect the value of Boston Scientific's stock. It may also expose Boston Scientific to potential liability and harm its public image. The Policy sets limits as to when trading in Boston Scientific's stock and other securities is appropriate, but is not intended to be a comprehensive review of the laws of insider trading. Accordingly, certain activities may violate this Policy without violating the securities laws. This Policy applies to all directors and employees of Boston Scientific.

This policy replaces the Stock Trading Guidelines previously adopted by the Board of Directors of Boston Scientific. Accordingly, please read this document carefully as you are required to abide by the policies outlined.

### General

As a general rule, it is against the law to buy or sell any securities while in possession of material non-public information relevant to that security (sometimes called "inside information"), or to communicate such information (known as "tipping"). In recent years, Congress has toughened the penalties for trading on or tipping material inside information and the Securities and Exchange Commission has aggressively prosecuted such traders and tippers. Any person who engages in insider trading or tipping can face a substantial jail term and fines of up to three times the profit gained (or loss avoided) by that person and/or his or her "tippees", as well as potentially substantial private civil liabilities. This is true regardless of your position with Boston Scientific. Please be aware that a trade by a family member may be treated as if it were a trade by the employee.

Law changes in recent years also expose employers such as Boston Scientific to possible liability on account of insider trading violations by employees, if it is found that the employer failed to take appropriate steps to prevent the employee's insider trading. This Stock Trading Policy is one step taken by Boston Scientific to prevent insider trading.

Please be aware that "trading" includes not only purchases and sales of Boston Scientific's stock, but also of options, warrants, puts and calls, and other derivative securities related to Boston Scientific's stock.

In general, information is "material" if it is significant to Boston Scientific's business or if its public disclosure could be expected to affect the price of Boston Scientific securities or a person's decision to buy or sell Boston Scientific securities. Examples of events or developments that should be presumed to be "material" in the context of Boston Scientific's stock would be knowledge of a trend on Boston Scientific's revenues or earnings, gain or loss of a major litigation, a purchase or sale of a business or substantial assets, or other significant corporate transactions.

Information is "non-public" until it has been effectively communicated to the marketplace through press release or other appropriate news media. In many cases, this may require the passage of several trading days after any initial disclosure.

Maintaining the confidence of investors and our reputation for business integrity is critical to the achievement of Boston Scientific's strategic objectives as a company. Under these circumstances, it is as important to avoid the appearance of impropriety as it is to avoid impropriety itself. This policy identifies those times when trading in Boston Scientific's stock by directors and employees is not appropriate, and is therefore not permitted. For this reason, the Policy prohibits some activities that may not be illegal but which create an unacceptable risk of harm to Boston Scientific's interests.

Violation of this Policy by any employee of Boston Scientific is grounds for disciplinary action, including immediate dismissal from employment.

### Policy and Procedure

1. **Material Non-public Information.** No director or employee of Boston Scientific may trade in Boston Scientific's stock during any period of time in which he or she has knowledge of material information about Boston Scientific, whether positive or negative, which has not been made widely available to the investing public. (If there is any question whether information is material or non-public, this matter should be discussed with Boston Scientific's General Counsel.)
2. **Designated Limited Trading Periods.** No director or employee of Boston Scientific may trade in Boston Scientific's stock during any period which Boston Scientific's President or Senior Vice President and General Counsel or Senior Vice President-Finance and Administration has designated as a limited trading period for a group of which such person is a member, whether or not such person possesses any material inside information about Boston Scientific.
3. **Information Sensitive Positions.** In order to avoid even the appearance of improper trading practices, certain individuals with access to sensitive information concerning Boston Scientific are subject to further restrictions on their trading activities. The following persons are considered to hold positions that are "information sensitive": (i) any director or executive officer of Boston Scientific (Senior Vice President and above), (ii) any employee reporting directly to a director or executive officer, (iii) any employee who attends Business Update or Operating Committee Meetings conducted by Boston Scientific and certain designated employees who report directly to such employees and receive written notice of designation, and (iv) designated employees responsible for the preparation of consolidated financial information concerning Boston Scientific.

The most common example of sensitive non-public information is Boston Scientific's annual and quarterly financial results. Accordingly, individuals holding any above-listed positions are restricted to trading in Boston Scientific's stock in each fiscal quarter during a period beginning on the third business day after the date upon which Boston Scientific's earnings for Boston Scientific's immediately preceding fiscal quarter have been publicly announced and ending on the last day of the second calendar month of the quarter in which the announcement is made. This period is limited because the trend of each quarter's financial results is often predictable by the end of the second month of a quarter. With respect to the release of annual financial results, the relevant trading period will begin on the third trading day after the date upon which Boston Scientific's earnings for the

immediately preceding fiscal year have been announced and end ten business days thereafter. In addition, Boston Scientific strongly recommends that members of the family of such persons who live in the same household also follow these trading restrictions.

Compliance with the trading periods set forth in this paragraph does not excuse an individual from compliance with the prohibitions in this policy against trading on material inside information, trading in a limited trading period, selling short, failing to provide notice to Boston Scientific prior to a trade, or trading in the stock of third parties while in possession of material non-public information.

4. **Notice to General Counsel.** Any person in an information-sensitive position must contact Boston Scientific's Senior Vice President and General Counsel prior to making any trade to determine if there are any important pending developments which need to be made public before such person could properly participate in the market or, if Boston Scientific is engaged in a financing or other activity which may require Boston Scientific to limit trading by its employees.
5. **No Short Sales.** In no event, should any person in an information-sensitive position sell Boston Scientific's stock "short" (a sale in which the seller does not own the stock at the time) or "short against the box" (a seller owns the stock but does not plan to deliver it currently) nor should he or she buy a put option or write a call option on Boston Scientific's stock unless he or she otherwise owns at least the number of shares underlying the option.
6. **Non-Public Information of Third Parties.** Any director or employee of Boston Scientific who possesses inside information which is material to any company with which Boston Scientific does business or is considering doing business (including a company with respect to which Boston Scientific is considering a potential acquisition or investment), may not purchase or sell securities of that company while in possession of such information.

#### Disclaimer of New Liabilities

This policy statement is not intended and shall not be deemed to impose on Boston Scientific or its directors and employees any civil, criminal, or other liability that would not exist in the absence of this policy statement.

## Smoking Policy

The Symbiosis Facility is a non-smoking facility. This means that smoking is not permitted in the facility including individual offices, common areas or company vehicles. At Boston Scientific/Symbiosis, smoking is also prohibited throughout the entire work site including parking areas and company grounds.

Compliance with the smoke free policy is mandatory for all employees and individuals visiting the Symbiosis facility, without exception. Any violation to this policy shall be treated in accordance with the disciplinary procedures outlined in this book.

Boston Scientific is devoted to improving health standards. Therefore, it is logical to offer our employees the highest health standards in our work environment.

## Substance Abuse Policy

In order to protect the health and safety of our employees and in keeping with the spirit and intent of the Drug Free Workplace Act of 1988, Boston Scientific is committed to provide a drug-free workplace. To this end the company has established the following drug-free workplace policy. Employees must, as a condition of employment, abide by this policy. Violations of this policy will result in disciplinary action up to and including termination of employment.

Employees are expected and required to report to work in appropriate mental and physical condition. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during work, on the company's premises, or while conducting company business off our premises is prohibited.

Specifically with regard to alcohol, the following actions are prohibited:

- Possession of alcohol on the premises or during work (including company provided desks, lockers, or company vehicles)
- Consumption of alcohol on or about the premises or in company vehicles or during work
- Reporting to work under the influence of or impaired by alcohol

Specifically with regard to drugs, the following actions are prohibited:

- Possession of illegal drugs on or about the premises or during work (including company provided desks, lockers, and company vehicles)
- Illegal drugs are defined as any controlled substance which cannot be obtained legally or which, although available legally, have been obtained illegally
- Consumption or use of illegal drugs on or about the premises or in company vehicles or during work
- Purchase, sale, or other transfer of illegal drugs
- Providing others with prescribed drugs or medication intended for oneself
- Consumption of prescribed drugs in excessive quantities
- Reporting to work under the influence of or impaired by illegal drugs

Employees who are taking prescribed medication that create a safety hazard on the job are required to notify Health Services of such use. If your medication interferes with your normal job performance, the company will attempt to make a reasonable accommodation to temporarily alter your job duties or reassign you to another job. If this is not possible, you may be required to take a leave of absence while impaired.

Boston Scientific/Symbiosis recognizes drug and alcohol abuse and dependency as a potential health and safety problem. Accordingly, we encourage employees who need help in dealing with these problems to obtain counseling by using our Employee Assistance Program before your job performance is affected.

The Drug Free Workplace Act also mandates that employees must report any conviction under a criminal drug statute or violations occurring on or off the company's premises while conducting company business, to the Human Resources department within five days of such conviction.

When Boston Scientific/Symbiosis has reason to believe this policy is being violated, we may search lockers, desks, or company vehicles and will cooperate with law enforcement authorities in the event of illegal drug activity involving employees.

**ASSIGNMENT**

WHEREAS, We,

**German TRABADA**  
16892 SW 1st Street  
Pembroke Pines, FL 33027-1093  
Citizenship: United States of America

**Russell F. DURGIN, Jr.**  
146 Knott Street  
Attleboro, MA 02703  
Citizenship: United States of America

and

**Robert SAKAL**  
76 Bolton Woods Way  
Bolton, MA 01740  
Citizenship: United States of America

(hereinafter also referred to as "the Assignor"); have invented new and useful inventions and discoveries in **ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE**, for which we have made application for Letters Patent of the United States, said application being filed January 8, 2004 and Assigned Serial No. 10/753,848 and;

WHEREAS, SCIMED LIFE SYSTEMS, INC., organized and existing under and by virtue of the laws of the State of Minnesota, having an office at One Scimed Place, Maple Grove, Minnesota 55311-1566, (hereinafter referred to as "the Assignee"), is desirous of acquiring the entire right, title and interest in and to the application and invention therein described and claimed and any Letters Patent that may be issued upon the application or for the improvements therein contained.

NOW, THEREFORE, in consideration of One U.S. Dollar (U.S. \$1.00) and other valuable consideration furnished by Assignee to us, receipt and sufficiency of which we hereby acknowledge, we hereby, without reservations:

1. Assign, transfer, and convey to Assignee the entire right, title, and interest in and to said inventions and discoveries, said application for Letters Patent of the United States of America, any and all other applications for Letters Patent on said inventions and discoveries in whatsoever countries, including all divisional, renewal, substitute, continuation, and Convention applications based in whole or in part upon said inventions or discoveries, or upon said applications, and any and all Letters Patent, reissues, and extensions of letters Patent granted for said inventions and discoveries or upon said applications, and every priority right that is or may be predicated upon or arise from said inventions, said discoveries, said applications, and said Letters Patent.

2. Authorize Assignee to file patent applications in any or all countries for any or all of said inventions and discoveries in my name or in the name of Assignee or otherwise as Assignee may deem advisable, under the International Convention or otherwise.

3. Authorize and request the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other governments to issue or transfer all said Letters Patent to Assignee, as assignee of the entire right, title, and interest therein or otherwise as Assignee may direct.

4. Warrant that we have not knowingly conveyed to others any right in said inventions, discoveries, applications, or patents or any license to use the same or to make, use, or sell anything embodying or utilizing any of said inventions or discoveries; and that we have good right to assign the same to Assignee without encumbrance.

5. Bind our heirs, legal representatives, and assigns, as well as ourselves, to do, upon Assignee's request and at Assignee's expense, but without additional consideration to us or them, all acts reasonably serving to assure that the said inventions and discoveries, the said patent applications, and the said Letters Patent shall be held and enjoyed by Assignee as fully and entirely as the same could have been held and enjoyed by us, our heirs, legal representatives, and assigns if this assignment had not been made; and particularly to execute and deliver to Assignee all lawful application documents including petitions, specifications, and oaths, and all assignments, disclaimers, and lawful affidavits in form and substance as may be requested by Assignee; to communicate to Assignee all facts known to us relating to said inventions and discoveries or the history thereof; and to furnish Assignee with any and all documents, photographs, models, samples, and other physical exhibits in our control or in the control of our heirs, legal representatives, or assigns which may be useful for establishing the facts of our conceptions, disclosures, and reduction to practice of said inventions and discoveries.





IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 8<sup>th</sup> day of June, 2004.

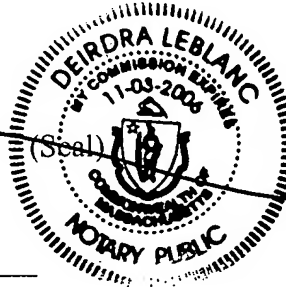
Russell F. Durgin, Jr.  
Russell F. DURGIN, Jr.

Commonwealth of Massachusetts )  
County of Middlesex )

On this 8<sup>th</sup> day of June, 2004, before me, the undersigned Notary Public, personally appeared Russ Durgin, provided to me through satisfactory evidence of identification, which was/were employee badge, to be the person(s) whose name (s) is signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

[Signature]  
Signature of Notary

My Commission Expires: 11/3/06



[10121/01301]  
[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 13<sup>th</sup> day of July, 2004.

Robert Sakal 7/13/04  
Robert SAKAL

Commonwealth of Massachusetts )  
County of Middlesex )

On this 13<sup>th</sup> day of July, 2004, before me, the undersigned Notary Public, personally appeared Robert Sakal, provided to me through satisfactory evidence of identification, which was/were personal knowledge, to be the person(s) whose name (s) is signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Kathleen D. Sullivan (Seal)  
Signature of Notary

My Commission Expires: Dec. 27, 2007



[10121/01301 - 99-0090]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Trabada et al.  
Serial No. : 10/753,848  
Filed : January 8, 2004  
For : Endoluminal Access Devices and Related  
Methods of Use  
Group Art Unit : 3731  
Examiner : TBA

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF KATHLEEN DILLON

1) I am a patent secretary employed by the Boston Scientific Corp. ("BSC"), and I have firsthand knowledge of all statements contained herein regarding the above-identified application ("the Application").

2) Scimed Life Systems, Inc. ("BSC/Scimed"), the intended assignee of the Application, is a wholly-owned subsidiary of BSC.

3) On January 8, 2004, the Application was filed with the U.S. Patent and Trademark Office ("USPTO") and received Application Serial No. 10/753,848.

4) On April 21, 2004, a Notice to File Missing Parts was mailed by the USPTO indicating that submission of an executed

declaration was required in the Application.

5) Since the filing of the application, Mr. Russell F. Durgin, Jr. and Mr. Robert Sakal, two of the three named inventors in the Application, have each executed a Declaration and an Assignment of the Application to BSC/Scimed.

6) On June 7, 2004, I mailed via Federal Express a letter ("First Trabada Letter") to the last known home and business addresses of Mr. German Trabada, one of the named inventors in the Application, along with Declaration and formal Assignment forms for his execution. Copies of the First Trabada Letter and the enclosed documents are attached hereto as Exhibit A.

7) As indicated by the internal records of BSC/Scimed, Mr. Trabada's last known address is 16892 S.W. 1<sup>st</sup> Street, Pembroke Pines, Florida 33027-1093, and Mr. Trabada's last known business address is 8600 N.W. 41 Street, Miami, Florida 33166-6202.

8) On June 14, 2004, I received a delivery confirmation email from FedEx which stated that the First Trabada Letter was delivered to Mr. Trabada on June 14, 2004, and was signed for or released by C. Trabada. A copy of the email confirmation from FedEx is attached hereto as Exhibit B.

9) On June 16, 2004, I called Mr. Trabada to discuss his receipt and execution of the Declaration and the formal Assignment sent on June 7, 2004. Mr. Trabada indicated that he did not believe that he was required to sign either of the

documents. A handwritten summary of my June 16, 2004 telephone conversation with Mr. Trabada is attached hereto as exhibit C.

10) On September 7, 2004, I mailed a second letter to Mr. Trabada ("Second Trabada Letter"), along with additional copies of the Declaration and the Assignment forms, requesting that he execute the enclosed documents and return them to me. Copies of the Second Trabada Letter and the enclosures sent therewith is attached as Exhibit D.

11) The Second Trabada Letter further included a signed copy of Mr. Trabada's Employment Agreement with BSC/Scimed, Acknowledgment of Receipt and Agreement to abide by the policies of the Employee Handbook, and the relevant sections from the Handbook regarding his inventor assignment obligations.

12) The Second Trabada Letter was sent to Mr. Trabada via Federal Express to his last known home and business addresses.

13) On September 9, 2004, I received a delivery confirmation email from FedEx which stated that the Second Trabada Letter was delivered to Mr. Trabada on September 9, 2004, and was signed for or released by German Trabada. A copy of the email confirmation from FedEx is attached hereto as Exhibit E.

14) On September 17, 2004, at his last known telephone number, I called Mr. Trabada to discuss his receipt and execution of the Declaration and the Assignment. Mr. Trabada was not reached, and I left a voice mail message. A record of this call

is shown on a handwritten correspondence summary attached as Exhibit F.

15) On September 20, 2004, at his last known telephone number, I called Mr. Trabada to discuss his receipt and execution of the Declaration and the formal Assignment. Mr. Trabada was not reached, and I left a voice mail message. A record of this call is shown on the handwritten correspondence summary attached as Exhibit F.

16) On October 5, 2004, Mr. Trabada telephoned me and indicated that he wanted compensation for his time in the amount of \$500.00. A record of this call is shown on the handwritten correspondence summary attached as Exhibit F.

17) On October 8, 2004, at his last known telephone number, I called Mr. Trabada to inform him that BSC would pay him \$250.00 per hour for his time. Mr. Trabada indicated that he would consider the offer. A record of this call is shown on the handwritten correspondence summary attached as Exhibit F.

18) On November 1, 2004 and November 5, 2004, I again called Mr. Trabada. I did not reach Mr. Trabada on either occasion, and thus, left voice mail messages on both dates. A record of these calls is shown on the handwritten correspondence summary attached as Exhibit F.

19) To this day, I have not received the executed documents from Mr. Trabada.

from Mr. Trabada.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent involved herein.

Date: *November 22, 2004*

  
Kathleen Dillon



**EXHIBITS A-F FOR  
DECLARATION OF KATHLEEN DILLON**



**Boston  
Scientific**

One Boston Scientific Place  
Natick, MA 01760-1537  
508.650.8000  
www.bostonscientific.com

June 7, 2004

German Trabada  
16892 SW 1<sup>st</sup> Street  
Pembroke Pines, FL 33027-1093

**Via: Federal Express**

7926 5692 6254

Dear German:

Enclosed please find the Declaration, Assignment and PCT Power of Attorney documents for the patent application entitled "***Endoluminal Access Devices and Related Methods of Use***".

This application was filed on January 8, 2004 and has been accorded Serial No. 10/753,848.

Please execute the enclosed documents where indicated, noting that the Assignment must be notarized. I would like to receive these documents back as soon as possible and have enclosed a self-addressed return Fedex envelope for your convenience.

If you have any questions or concerns, please do not hesitate to contact me at (508) 650-8768.

Very truly yours,



Kathleen Dillon  
Patent Secretary

/ked  
Enclosure

**ASSIGNMENT**

WHEREAS, We,

**German TRABADA**  
16892 SW 1st Street  
Pembroke Pines, FL 33027-1093  
Citizenship: United States of America

**Russell F. DURGIN, Jr.**  
146 Knott Street  
Attleboro, MA 02703  
Citizenship: United States of America

and

**Robert SAKAL**  
76 Bolton Woods Way  
Bolton, MA 01740  
Citizenship: United States of America

(hereinafter also referred to as "the Assignor"); have invented new and useful inventions and discoveries in **ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE**, for which we have made application for Letters Patent of the United States, said application being filed January 8, 2004 and Assigned Serial No. 10/753,848 and;

WHEREAS, SCIMED LIFE SYSTEMS, INC., organized and existing under and by virtue of the laws of the State of Minnesota, having an office at One Scimed Place, Maple Grove, Minnesota 55311-1566, (hereinafter referred to as "the Assignee"), is desirous of acquiring the entire right, title and interest in and to the application and invention therein described and claimed and any Letters Patent that may be issued upon the application or for the improvements therein contained.

NOW, THEREFORE, in consideration of One U.S. Dollar (U.S. \$1.00) and other valuable consideration furnished by Assignee to us, receipt and sufficiency of which we hereby acknowledge, we hereby, without reservations:

1. Assign, transfer, and convey to Assignee the entire right, title, and interest in and to said inventions and discoveries, said application for Letters Patent of the United States of America, any and all other applications for Letters Patent on said inventions and discoveries in whatsoever countries, including all divisional, renewal, substitute, continuation, and Convention applications based in whole or in part upon said inventions or discoveries, or upon said applications, and any and all Letters Patent, reissues, and extensions of letters Patent granted for said inventions and discoveries or upon said applications, and every priority right that is or may be predicated upon or arise from said inventions, said discoveries, said applications, and said Letters Patent.

2. Authorize Assignee to file patent applications in any or all countries for any or all of said inventions and discoveries in my name or in the name of Assignee or otherwise as Assignee may deem advisable, under the International Convention or otherwise.

3. Authorize and request the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other governments to issue or transfer all said Letters Patent to Assignee, as assignee of the entire right, title, and interest therein or otherwise as Assignee may direct.

4. Warrant that we have not knowingly conveyed to others any right in said inventions, discoveries, applications, or patents or any license to use the same or to make, use, or sell anything embodying or utilizing any of said inventions or discoveries; and that we have good right to assign the same to Assignee without encumbrance.

5. Bind our heirs, legal representatives, and assigns, as well as ourselves, to do, upon Assignee's request and at Assignee's expense, but without additional consideration to us or them, all acts reasonably serving to assure that the said inventions and discoveries, the said patent applications, and the said Letters Patent shall be held and enjoyed by Assignee as fully and entirely as the same could have been held and enjoyed by us, our heirs, legal representatives, and assigns if this assignment had not been made; and particularly to execute and deliver to Assignee all lawful application documents including petitions, specifications, and oaths, and all assignments, disclaimers, and lawful affidavits in form and substance as may be requested by Assignee; to communicate to Assignee all facts known to us relating to said inventions and discoveries or the history thereof; and to furnish Assignee with any and all documents, photographs, models, samples, and other physical exhibits in our control or in the control of our heirs, legal representatives, or assigns which may be useful for establishing the facts of our conceptions, disclosures, and reduction to practice of said inventions and discoveries.

[10121/01301]  
[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Russell F. DURGIN, Jr.

Commonwealth of Massachusetts )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, provided to me through satisfactory evidence of identification, which was/were \_\_\_\_\_, to be the person(s) whose name (s) is signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Notary (Seal)

My Commission Expires: \_\_\_\_\_



[10121/01301]  
[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day  
of \_\_\_\_\_, 2004.

\_\_\_\_\_  
German TRABADA

Commonwealth of Massachusetts )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public,  
personally appeared \_\_\_\_\_, provided to me through satisfactory  
evidence of identification, which was/were \_\_\_\_\_, to be the  
person(s) whose name (s) is signed on the preceding or attached document in my presence, and  
who swore or affirmed to me that the contents of the document are truthful and accurate to the  
best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Notary (Seal)

My Commission Expires: \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**DECLARATION**

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am an original, first, and sole inventor (if only one name is listed below) or an original, first and joint inventor (if multiple names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

**ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE**

the specification of which was filed on January 8, 2004 and Assigned Serial No. 10/753,848.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment, if any, specifically referred to in this declaration.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

None

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of this application:

None

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first joint inventor : **German TRABADA**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **16892 SW 1<sup>st</sup> Street**  
**Pembroke Pines, FL 33027-1093**

Citizenship : **United States of America**

Post Office Address: : **Same as above**



I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Second joint inventor : **Russell F. DURGIN, Jr.**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **146 Knott Street  
Attleboro, MA 02703**

Citizenship : **United States of America**

Post Office Address: : **Same as above**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Third joint inventor : **Robert SAKAL**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **76 Bolton Woods Way  
Bolton, MA 01740**

Citizenship : **United States of America**

Post Office Address: : **Same as above**

# PCT

## GENERAL POWER OF ATTORNEY

(for several international applications filed under the Patent Cooperation Treaty)

(PCT Rule 90.5)

The undersigned person(s) :

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

TRABADA. German

hereby appoint(s) the following person as:

☐ agent

☒ common representative

Name and address

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

Scimed Life Systems, Inc  
One Scimed Place  
Maple Grove, MN 55311-1566  
USA

to represent the undersigned before

☒ all the competent International Authorities

☐ the International Searching Authority only

☐ the International Preliminary Examining Authority only

in connection with any and all international applications filed by the undersigned with the following Office

United States Patent and Trademark Office

as receiving Office

and to make or receive payments on behalf of the undersigned.

Signature(s) (where there are several persons, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading this power):

German Trabada

Date:

Dillon, Kathy

---

From: FedEx [donotreply@fedex.com]  
Sent: Monday, June 14, 2004 11:36 AM  
To: dillonk@bsci.com  
Subject: FedEx shipment 792656926254

Our records indicate that the shipment sent from KATHLEEN DILLON/BOSTON SCIENTIFIC CORP to German Trabada has been delivered.

The package was delivered on 06/14/2004 at 11:35 AM and signed for or released by C..TRABADA.

The ship date of the shipment was 06/07/2004.

The tracking number of this shipment was 792656926254.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:  
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=792656926254  
&action=track&language=english&cntry\\_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792656926254&action=track&language=english&cntry_code=us)

Disclaimer

-----  
FedEx has not validated the authenticity of any email address.

## **EXHIBIT C**

99-0090051

June 16<sup>th</sup>

German Trabada called -

- He will not sign the General PCT POA - it is too broad -
- Also, does not think he is required to sign these documents at all.

Per Kurt - get copy of Employment Agreement

## **EXHIBIT D**

# Boston Scientific

One Boston Scientific Place  
Natick, MA 01760-1537  
508.650.8000  
www.bostonscientific.com

September 7, 2004

German Trabada  
16892 SW 1<sup>st</sup> Street  
Pembroke Pines, FL 33027-1093

**Via: Federal Express**

7919 2688 1552

Re: U.S. Patent Application No. 10/753,848  
"ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE"  
BSC Reference 99-0090

Dear German:

Per your request enclosed please find a copy of your signed Employment Agreement, Acknowledgment of Receipt and Agreement to abide by the policies of the Employee Handbook, and the relevant section from the Handbook outlining your inventor assignment obligations. This evidences your agreement that all inventions you made during the term of your employment with Boston Scientific Corporation are the property of Boston Scientific/Symbiosis.

Also enclosed is another copy of the Declaration, Assignment and PCT Power of Attorney documents. Please execute the enclosed documents where indicated, noting that the Assignment must be notarized. I would like to receive these documents back as soon as possible and have enclosed a self-addressed return Fedex envelope for your convenience.

If you have any questions or concerns, please do not hesitate to contact me at (508) 650-8768.

Very truly yours,



Kathleen Dillon  
Patent Secretary

/ked  
Enclosure



# Boston Scientific Corporation

8600 N.W. 41 Street  
Miami, FL 33166-6202  
Telephone (305) 597-4000  
Fax (305) 597-4001

October 9, 1997

German Trabada  
16892 SW 1<sup>st</sup> Street  
Pembroke Pines, FL 33027

Dear German:

On behalf of Boston Scientific Corporation, I am very pleased to confirm our offer of employment and outline below the terms and conditions.

Your new position will be Designer I. You will report directly to Matt Solar, R&D Engineering Manager.

**Compensation:**

BSC's compensation programs provide our employees, on a pay for performance basis, with significant compensation opportunities. The objective of these programs is to recognize and reward both individual and company performance.

**Base Salary** - Your base salary will be \$1615.40 per period, payable bi-weekly, which annualized equals \$42,000.40. Your next review of performance and annual base salary will occur in January 1999.

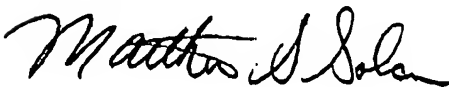
**BSC Performance Bonus Award Program** - You will be eligible to participate in the annual BSC Performance Bonus Award Program, subject to terms generally applicable to program participants. For 1998, your annual target bonus opportunity range is 0%-7%. Your actual award will be based on your level of achievement of individual goals and BSC's achievement of corporate performance goals. You must be employed on the date the award is paid to remain eligible in any given year.

**Acceptance:**

Please indicate your formal acceptance of this position by signing and returning the entire original of this letter no later than October 10, 1997.

German, I believe the opportunity with Boston Scientific Corporation's Symbiosis organization will be a mutually rewarding one, and I look forward to your contributions.

Sincerely,



Matt Solar  
R&D Engineering Manager  
Boston Scientific Corporation  
Symbiosis Facility

Accepted: \_\_\_\_\_

(name)

Date: \_\_\_\_\_

10/10/97

**RECEIPT OF THE SYMBIOSIS CORPORATION  
EMPLOYEE HANDBOOK**

I German Traback, have received a copy of the Symbiosis Corporation Employee Handbook. I agree to read the complete handbook and to abide by the rules, policies and benefits contained therein.

I understand that the rules, policies, and benefits contained in the Employee Handbook may be modified, substituted or deleted at any time.

I understand that neither this handbook nor any other communication by management is intended to, in any way, create a contract of permanent employment.

  
\_\_\_\_\_  
Employee Signature

8/29/94  
\_\_\_\_\_  
Date received

**Acknowledgment of Employment at Will Agreement  
and  
Receipt of Handbook**

In consideration of my employment, I agree to conform to the rules and regulations of the Company. I understand that my employment may be terminated at-will with or without notice, at anytime, at the option of either the Company or myself.


I understand that no management representative has any authority to enter into any agreement of employment for any specific period of time, except for the Vice President and General Manager. Any such agreement between the Vice President and General Manager and myself must be in writing.

I German Trabada, have received a copy of the Boston Scientific/Symbiosis Employee Handbook. I agree to read the complete handbook and to abide by the rules, policies and benefits contained therein.

I understand the rules, policies, and benefits contained in the Employee Handbook may be modified, substituted or deleted at anytime.

I understand that neither this Handbook nor an other communication by management is intended, in any way, to create a contract of permanent employment.

German Trabada  
Employee Name

  
Employee Signature

1/20/99  
Date Received

## Patent Policy

All inventions and discoveries made by you, solely or jointly with others, during the period of your employment with Boston Scientific/Symbiosis and six months thereafter; arising out of employment or pertaining to the business or the research activities of Boston Scientific/Symbiosis, and all records including original notebooks, drawings and memoranda (which hereby you agree to keep), are and shall be the property of Boston Scientific/Symbiosis.

You will promptly, without request, disclose to Boston Scientific/Symbiosis all such inventions and discoveries you make.

Upon request of Boston Scientific/Symbiosis and at its expense, you or your legal representative will apply for Letters of Patent in this and in foreign countries on such inventions and discoveries; will execute all papers necessary thereto, including assignments of patent applications and patents; and will lend assistance to the prosecution of defense of any proceedings in or relating to such patent applications and patents. When such assistance is rendered after employment, Boston Scientific/Symbiosis will pay a reasonable sum (as determined by Boston Scientific/Symbiosis) for time and expenses.

Upon the termination of employment, you or your legal representative shall promptly deliver to Boston Scientific/Symbiosis all originals and copies of drawings, records, reports, notes, correspondence, photographs, blueprints, maps and any other recorded, written or printed matter under your control relating to any inventions and discoveries referred to herein and will return all property of Boston Scientific/Symbiosis such as equipment, specimens, samples, models and biological culture.

**ASSIGNMENT**

WHEREAS, We,

**German TRABADA**  
16892 SW 1st Street  
Pembroke Pines, FL 33027-1093  
Citizenship: United States of America

**Russell F. DURGIN, Jr.**  
146 Knott Street  
Attleboro, MA 02703  
Citizenship: United States of America

and

**Robert SAKAL**  
76 Bolton Woods Way  
Bolton, MA 01740  
Citizenship: United States of America

(hereinafter also referred to as "the Assignor"); have invented new and useful inventions and discoveries in **ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE**, for which we have made application for Letters Patent of the United States, said application being filed January 8, 2004 and Assigned Serial No. 10/753,848 and;

WHEREAS, SCIMED LIFE SYSTEMS, INC., organized and existing under and by virtue of the laws of the State of Minnesota, having an office at One Scimed Place, Maple Grove, Minnesota 55311-1566, (hereinafter referred to as "the Assignee"), is desirous of acquiring the entire right, title and interest in and to the application and invention therein described and claimed and any Letters Patent that may be issued upon the application or for the improvements therein contained.

NOW, THEREFORE, in consideration of One U.S. Dollar (U.S. \$1.00) and other valuable consideration furnished by Assignee to us, receipt and sufficiency of which we hereby acknowledge, we hereby, without reservations:

1. Assign, transfer, and convey to Assignee the entire right, title, and interest in and to said inventions and discoveries, said application for Letters Patent of the United States of America, any and all other applications for Letters Patent on said inventions and discoveries in whatsoever countries, including all divisional, renewal, substitute, continuation, and Convention applications based in whole or in part upon said inventions or discoveries, or upon said applications, and any and all Letters Patent, reissues, and extensions of letters Patent granted for said inventions and discoveries or upon said applications, and every priority right that is or may be predicated upon or arise from said inventions, said discoveries, said applications, and said Letters Patent.

2. Authorize Assignee to file patent applications in any or all countries for any or all of said inventions and discoveries in my name or in the name of Assignee or otherwise as Assignee may deem advisable, under the International Convention or otherwise.

3. Authorize and request the Commissioner of Patents and Trademarks of the United States of America and the empowered officials of all other governments to issue or transfer all said Letters Patent to Assignee, as assignee of the entire right, title, and interest therein or otherwise as Assignee may direct.

4. Warrant that we have not knowingly conveyed to others any right in said inventions, discoveries, applications, or patents or any license to use the same or to make, use, or sell anything embodying or utilizing any of said inventions or discoveries; and that we have good right to assign the same to Assignee without encumbrance.

5. Bind our heirs, legal representatives, and assigns, as well as ourselves, to do, upon Assignee's request and at Assignee's expense, but without additional consideration to us or them, all acts reasonably serving to assure that the said inventions and discoveries, the said patent applications, and the said Letters Patent shall be held and enjoyed by Assignee as fully and entirely as the same could have been held and enjoyed by us, our heirs, legal representatives, and assigns if this assignment had not been made; and particularly to execute and deliver to Assignee all lawful application documents including petitions, specifications, and oaths, and all assignments, disclaimers, and lawful affidavits in form and substance as may be requested by Assignee; to communicate to Assignee all facts known to us relating to said inventions and discoveries or the history thereof; and to furnish Assignee with any and all documents, photographs, models, samples, and other physical exhibits in our control or in the control of our heirs, legal representatives, or assigns which may be useful for establishing the facts of our conceptions, disclosures, and reduction to practice of said inventions and discoveries.

[10121/01301]

[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Russell F. DURGIN, Jr.

Commonwealth of Massachusetts )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, provided to me through satisfactory evidence of identification, which was/were \_\_\_\_\_, to be the person(s) whose name (s) is signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Notary (Seal)

My Commission Expires: \_\_\_\_\_

[10121/01301]

[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Robert SAKAL

Commonwealth of Massachusetts )  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, provided to me through satisfactory evidence of identification, which was/were \_\_\_\_\_, to be the person(s) whose name (s) is signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Notary (Seal)

My Commission Expires: \_\_\_\_\_



[10121/01301]

[99-090]

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day  
of \_\_\_\_\_, 2004.

\_\_\_\_\_  
German TRABADA

Commonwealth of Massachusetts     )  
County of \_\_\_\_\_     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public,  
personally appeared \_\_\_\_\_, provided to me through satisfactory  
evidence of identification, which was/were \_\_\_\_\_, to be the  
person(s) whose name (s) is signed on the preceding or attached document in my presence, and  
who swore or affirmed to me that the contents of the document are truthful and accurate to the  
best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Notary     (Seal)

My Commission Expires: \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**DECLARATION**

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am an original, first, and sole inventor (if only one name is listed below) or an original, first and joint inventor (if multiple names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

**ENDOLUMINAL ACCESS DEVICES AND RELATED METHODS OF USE**

the specification of which was filed on January 8, 2004 and Assigned Serial No. 10/753,848.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment, if any, specifically referred to in this declaration.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

None

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of this application:

None

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Second joint inventor : **Russell F. DURGIN, Jr.**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **146 Knott Street  
Attleboro, MA 02703**

Citizenship : **United States of America**

Post Office Address: : **Same as above**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first joint inventor : **German TRABADA**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **16892 SW 1<sup>st</sup> Street  
Pembroke Pines, FL 33027-1093**

Citizenship : **United States of America**

Post Office Address: : **Same as above**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Third joint inventor : **Robert SAKAL**

Inventor's signature : \_\_\_\_\_

Date : \_\_\_\_\_

Residence : **76 Bolton Woods Way  
Bolton, MA 01740**

Citizenship : **United States of America**

Post Office Address: : **Same as above**

# PCT

## GENERAL POWER OF ATTORNEY

(for several international applications filed under the Patent Cooperation Treaty)

(PCT Rule 90.5)

The undersigned person(s) :

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

TRABADA, German

hereby appoint(s) the following person as:

☐ agent

☒ common representative

Name and address

(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

Scimed Life Systems, Inc  
One Scimed Place  
Maple Grove, MN 55311-1566  
USA

to represent the undersigned before

☒ all the competent International Authorities

☐ the International Searching Authority only

☐ the International Preliminary Examining Authority only

in connection with U.S. application 10/753,848

filed by the undersigned with the following Office

United States Patent & Trademark Office

as receiving Office

and to make or receive payments on behalf of the undersigned.

Signature(s) (where there are several persons, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading this power):

German Trabada

Date: \_\_\_\_\_

Dillon, Kathy

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From: FedEx [donotreply@fedex.com]  
Sent: Thursday, September 09, 2004 4:44 PM  
To: dillonk@bsci.com  
Subject: FedEx shipment 791926881552

Our records indicate that the shipment sent from KATHLEEN DILLON/BOSTON SCIENTIFIC CORP to German Trabada has been delivered.

The package was delivered on 09/09/2004 at 3:51 PM and signed for or released by G.ERMAN TRABADA.

The ship date of the shipment was 09/07/2004.

The tracking number of this shipment was 791926881552.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:  
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=791926881552  
&action=track&language=english&cntry\\_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=791926881552&action=track&language=english&cntry_code=us)

Disclaimer

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FedEx has not validated the authenticity of any email address.

9/17- 954-438-1570- left voice mail message

9/20- " " " left voice mail message

10/5- German called - wants to be paid for his time - told him I would talk to attorney + let him know - wants \$500  
work # is 954-744-7757 - will not sign PCT POA

10/8- talked to German told him \$250 per hour for 2 hours. He said that he will think it over. He feels his signature is worth a lot. I informed him that there is a deadline of 11/1 + he said he would let me know.

11/1- 954-744-7757 - left voice message at his work# -

11/5- 954-744-7757 - left another message